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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,782	04/16/2004	Patrick C. Dubbert	MBB 8550UI	1277
1688 7590 06/18/2007 POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERSCOURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			EXAMINER CHIN SHUE, ALVIN C	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 06/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/826,782

Applicant(s)

DUBBERT ET AL.

Examiner

Alvin C. Chin-Shue

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-18 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7/14/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by St-Germain.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over St-Germain in view of Shoemaker. St-Germain shows the claimed assembly with the exception of the claimed attachment strap and retainer body. Shoemaker shows an attachment strap 34 with an eyelet 22, a retainer body 20 with slotted walls 78, and a wedge 22. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide St-Germain with an attachment strap and body, as taught by Shoemaker, that is capable of being used with his standoff bracket capable of attaching to a wall. To slope the surface of the slots to correspond to the slope of the wedge, would have been an obvious engineering

expediency depending on the degree of wedging desired with respect to the depth of insertion of the wedge.

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dandurand in view of Burton. Dandurand shows the claimed system with the exception of the cross braces. Burton shows cross braces 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the uprights of Dandurand with cross braces, as taught by Burton, for stabilizing his system.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reyland in view of Burton. Reyland shows the claimed system with the exception of the cross braces. Burton shows cross braces 11. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the uprights of Reyland with cross braces, as taught by Burton, for stabilizing his system.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dandurand and Burton, as applied to claim 1 above, and further in view of Lanka. Lanka shows a level adjustment means at 46,50,52. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the

uprights of Dandurand with a base plate screw and adjustment nut, as taught by Lanka, for leveling his uprights on a supporting surface.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dandurand and Burton, as applied to claim 1 above, and further in view of Frank et al. Frank shows a guard rail bracket with a toggle pin and guard rail with an opening at 10. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the uprights of Dandurand with brackets and guard rails, as taught by Frank, to facilitate attachment of guardrails to his uprights.

Claims 6-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Dandurand and Burton, as applied to claim 1 above, and further in view of St-Germain. St-Germain shows a standoff assembly with a base 5, leg 10, dowel 23, and attachment assembly with a strap 18 with an eyelet 22 and retainer at 13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Dandurand with a standoff and attachment assemblies, as taught by St-Germain, that is capable of attaching his system to a wall.

Claims 9,10,11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dandurand, Burton, and St-Germain, as applied to claim 6 above, and further in view of Shoemaker as applied above.

Applicant's election of fig. 17 in the reply filed on 4/4/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 12 and 19 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/4/07.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin C. Chin-Shue whose telephone number is 571-272-6828. The examiner can normally be reached on Monday-Friday, 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax

phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alvin C. Chin-Shue
Primary Examiner
Art Unit 3634

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